



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201204027

NOV 03 2011

SE:T:EP:RA:74

UIL No. 9100.00-00, 408A.00-00

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LEGEND:

Taxpayer A = XXXXXXXX

Taxpayer B = XXXXXXXX

Custodian M = XXXXXXXX

Amount A = XXXXXXXX

IRA X = XXXXXXXX
XXXXXXX

IRA Y = XXXXXXXX
XXXXXXX

Year 1 = XXXXXXXX

Date 1 = XXXXXXXX

Dear XXXXXXXX:

This is in response to your letter dated March 25, 2010, in which your authorized representative, on your behalf, request relief under section 301.9100-3 of the Procedure and Administrative Regulations (the "P&A Regulations"). Following conversion of your traditional individual retirement account (IRA) to your Roth IRA, you request a ruling to allow the recharacterization of your Roth IRA as a traditional IRA after the expiration of the election period under section 408A(6) of the Internal Revenue Code (the "Code") and section 1.408A-5 of the Federal Income Tax Regulations (the "IT Regulations").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A and Taxpayer B ("the Taxpayers") file Form 1040, U.S. Individual Income Tax Return, jointly as a married couple. Taxpayer A, owns IRA X, an individual retirement account described in section 408(a) of the Code, and maintained by Custodian M. In December Year 1, Custodian M, at Taxpayer A's request, transferred Amount A from IRA X to IRA Y, a Roth IRA described in section 408A of the Code, as a Roth IRA conversion.

Taxpayer A represents that at the time of the conversion, the Taxpayers were unaware that their modified adjusted gross income for the Year 1 taxable year exceeded \$100,000.00, thus making them ineligible to convert the traditional IRA to a Roth IRA. The Taxpayers federal income tax return for Year 1 was prepared by a tax professional who had prepared the Taxpayers joint return for several years prior to and including Year 1. Although the Taxpayers provided the tax professional with a Form 1099-R, he did not inform them that they were ineligible for a Roth IRA conversion for the taxable year. In addition, the tax professional did not inform the Taxpayers of the need to recharacterize the Roth IRA Y conversion prior to the deadline for doing so. Form 1099-R issued for Year 1 reported Amount A as an IRA distribution. The Taxpayers Year 1 income tax return was timely filed on or about Date 1, by electronic filing.

The Taxpayer's request for relief under section 301.9100 of the P&A Regulations was filed after discovering that they had missed the deadline to recharacterize Roth IRA Y back to IRA X, and prior to the Internal Revenue Service (the "Service") discovering that Taxpayer A had not timely elected to recharacterize Roth IRA Y to a traditional IRA. The statute of limitations on Taxpayer A's Federal Income Tax Return for Year 1 was open when this ruling request was submitted.

Based on your submission and the foregoing facts and representations, you request a ruling that, pursuant to section 301.9100-3 of the P&A Regulations, Taxpayer A be granted a period of time not to exceed 60 days from the date of this letter ruling to recharacterize Roth IRA Y as a traditional IRA.

With respect to your ruling request, section 408A(d)(6) of the Code and section 1.408A-5 of the IT Regulations provide that, except as otherwise provided by the Secretary, a taxpayer may elect to recharacterize an IRA contribution made to one type of IRA as having been made to another type of IRA by making a trustee-to-trustee transfer of the IRA contribution, plus earnings, to the other type of IRA. In a recharacterization, the IRA contribution is treated as having been made to the transferee IRA and not the transferor IRA. Under section 408A(d)(6) of the Code and section 1.408A-5 of the IT Regulations, this recharacterization election generally must occur on or before the date prescribed by law, including extensions, for filing the taxpayer's Federal income tax return for the year of contribution.

Section 1.408A-5, Question & Answer (Q&A)-6, of the IT Regulations describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount that has been converted from a traditional IRA to a Roth IRA: (1) the taxpayer must notify the Roth IRA trustee of the taxpayer's intent to recharacterize the amount, (2) the taxpayer must provide the trustee (and the transferee trustee, if different from the transferor trustee) with specified information that is sufficient to effect the recharacterization, and (3) the trustee must make the transfer.

Section 408A(c)(3)(B) of the Code provides, in relevant part, that an individual with an adjusted gross income (as modified within the meaning of subparagraph (c)(3)(C)) in excess of \$100,000 for a taxable year, is not permitted to make a qualified rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during that taxable year.

Section 1.408A-4, Q&A-2 of the IT Regulations provides that an individual with modified adjusted gross income in excess of \$100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during a taxable year. Section 1.408A-4, Q&A-2 further provides that an individual and his spouse must file a joint Federal tax return to convert a traditional IRA to a Roth IRA, and that the modified adjusted gross income (AGI) subject to the \$100,000 limit for a taxable year is the modified adjusted gross income derived from the joint return using the couple's combined income.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the P&A Regulations provide guidance concerning requests for relief submitted to the Service on or after December 31, 1997. Section 301.9100-1(c) provides that the Commissioner of Internal Revenue, in his discretion, may grant a reasonable extension of the time fixed by a regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin for the making of an election or application for relief in respect of tax under, among others, Subtitle A of the Code.

Section 301.9100-2 of the P&A Regulations lists certain elections for which automatic extensions of time to file are granted. Section 301.9100-3 generally provides guidance with respect to the granting of relief with respect to those elections not referenced in section 301.9100-2. The relief requested in this case is not referenced in section 301.9100-2.

Section 301.9100-3 of the P&A Regulations provides that applications for relief that fall within section 301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits described in section 301.9100-3(e)(2)) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the Government.

Section 301.9100-3(b)(1) of the P & A Regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith (i) if its request for section 301.9100-1 relief is filed before the failure to make a timely election is discovered by the Service; (ii) if the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) if the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the Service; or (v) the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1)(ii) of the P&A Regulations provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the Service will not grant relief when tax years that would have been affected by the election had it been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

The Taxpayers' ruling request requires the Internal Revenue Service to determine whether they are eligible for relief under the provisions of section 301.9100-3 of the P&A Regulations.

In this case, the Taxpayers provided the tax return preparer information which showed Taxpayer A had converted Amount A from IRA X to Roth IRA Y during Year 1. Thus, while the Taxpayers were ineligible to convert IRA X to Roth IRA Y because their adjusted gross income exceeded the \$100,000 limit under section 408A(c)(3)(B) of the Code, the Taxpayers relied on their professional tax advisor to advise them of the ability to recharacterize a failed Roth IRA conversion. The professional tax advisor failed to advise them of the need to make the election within the time permitted by law.

With respect to Taxpayers' request for relief, based on the information submitted and the representations made, the requirements of section 301.9100-1 and 301.9100-3 of the P&A Regulations have been met, and that the Taxpayers acted reasonably and in good faith with respect to making the election to recharacterize the failed Roth IRA conversion as a traditional IRA. The Taxpayers were unaware that they were ineligible to establish Roth IRA Y until the due date for recharacterizing had passed. Further, this ruling was requested prior to the Service discovering the Taxpayers failure to make a timely election to recharacterize. In addition, the Taxpayers relied on tax professionals to prepare their Year 1 income tax returns who did not inform them that they were ineligible to do a Roth conversion or of the need for a recharacterization election. Thus, the Taxpayers satisfy clauses (i) and (v) of section 301.9100-3(b)(1) of the P&A Regulations. In addition, the statute of limitations on the Taxpayers federal income tax return for Year 1 was open at the time this request was submitted and the interests of the government would not be prejudiced by providing relief.

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Accordingly, we rule that, pursuant to section 301.9100-3 of the P&A Regulations, the Taxpayers are granted a period not to exceed 60 days from the date of this letter to recharacterize Roth IRA Y back to a traditional IRA.

This letter assumes that IRA X and IRA Y otherwise qualify under Code sections 408 and 408A respectively, at all relevant times.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact XXXXXXXX, I.D. No. XXXXXXXX, at (XXX) XXXXXXXX. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager,
Employee Plans Technical Group 3

Enclosures:
Deleted copy of this letter
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